

MISC. CRIMINAL APPLICATION NO. 5674 OF 1994.

Date of decision: 17.4.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. A.D. Padival, advocate for petitioner.

Mr. S.R. Divetia, A.P.P. for respondent No.1-State.

Mr. H.M. Parikh, advocate for respondents No.2 and 3.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R. R. Jain, J.

-----

April 17, 1996.

Oral judgment:

This is an application under Section 439 (2) of the Criminal Procedure Code ('the Code' for short) for cancellation of bail operating in favour of respondents No.2 and 3 who are charged for offences under sections 302, 498-A, 304-B read with Section 34 of the Indian Penal Code, in a case registered at C.R.No.84/94 of Thasara Police Station, District Kheda. From the record it transpires that respondent No.3, Kherunisha Mohmed Roshan Luhar preferred application for bail under Section 437 of the Code and on 18.5.1994 was released on furnishing surety of Rs.3,000/- and personal bond in like amount. Similarly, application on behalf of respondent

No.2 was also moved on 24.5.1994 and was disposed of on 25.5.1994 releasing on furnishing surety of Rs.3,000/and personal bond in like amount. Aggrieved by both the orders passed in separate applications, present petitioner/original complainant has filed this application alleging that the learned Magistrate has erred in appreciating material placed before him and that the orders are patently erroneous and dehors the provisions of law.

Mr. Divetia, learned A.P.P. for respondent No.1, has raised preliminary objection about maintainability of this application. It is true that both the applications in which impugned orders are passed are arising from the same C.R. Number but were filed separately by different applicants at different point of time and were disposed of by separate orders passed on merits. As per rules, the aggrieved party has to prefer separate applications. In this case, the petitioner has preferred only one application challenging both the orders referred to above passed separately in different proceedings and in relation to different petitioners. In my view, at the outset, the petition is not maintainable and deserves to be dismissed.

Apart from this fact, as a rule, order of cancellation of bail should not be passed in mechanical manner and the petitioner challenging the order has to show concrete, cogent and overwhelming circumstances and special reasons germane to cancellation. Normally, an act of abuse of liberty or violating terms and conditions imposed by court while granting bail application would be concrete and overwhelming circumstance and special reason germane to cancellation but in this case no such allegation is made. The learned Magistrate was pleased to appreciate the evidence placed before him at prima facie stage and arrived at just conclusion to exercise discretion in favour of respondents. Mr. Padival has not been able to show as to how the learned Magistrate has committed error of law or illegality overlooking express provisions of law. In light of these facts, the petition is devoid of merits and deserves to be dismissed.

From the record it transpires that the same petitioner had filed Special Criminal Application No.1981 of 1994 in connection with same C.R.Number seeking direction regarding investigation. The court while disposing the petition directed CID (Crime) to investigate and submit within two months. The order was passed on 17.2.1995. As the report was not filed within stipulated period, this Court (Coram: D.G. Karia, J.), vide order dated

30.6.1995 issued notice against concerned officer to show cause for alleged breach of order. In response to said order, report of investigating officer has now come on record, that is, in the form of letter dated 25.3.1996 addressed to the concerned A.P.P. incharge of this matter. The original letter is placed on record. Since the report is filed beyond stipulated period without assigning any reason, was directed to file affidavit explaining circumstances for delay. Mr. K.R. Parghi, Police Inspector, CID Anand, has filed affidavit dated 6.4.1996. In paragraphs 2 and 3 he has explained delay. On reading paras 2 and 3, it appears that in fact there is no delay as time and again the investigating officer did submit report to this court. It appears that despite having sent reports to this court, same has not been placed on record by the Registry. In view of this fact, in my view, there is no deliberate delay in filing report as directed by this court vide order dated 17.2.1995. Hence, notice against the concerned officer of CID stands discharged.

In light of aforesaid facts and circumstances, the petition is dismissed. Rule is discharged.